

1 WILLIAMS & CONNOLLY LLP
2 Joseph G. Petrosinelli, *pro hac vice*
3 Ashley W. Hardin, *pro hac vice*
4 680 Maine Avenue SW
5 Washington, DC 20024
6 Tel.: (202) 434-5000
7 jpetrosinelli@wc.com
8 ahardin@wc.com

6 *Attorney for Defendants YouTube, LLC*
7 *and Google LLC*

8 *[Additional parties and counsel listed on*
9 *signature pages]*

10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 IN RE: SOCIAL MEDIA ADOLESCENT
14 ADDICTION/PERSONAL INJURY
15 PRODUCTS LIABILITY LITIGATION,

MDL No. 3047

Case No.: 4:23-cv-03065-YGR

16 THIS DOCUMENT RELATES TO:

17 *Board of Education of Harford County v. Meta*
18 *Platforms Inc., et al.*

**REPLY IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT (HARFORD)
(SD MSJ No. 6)**

19 Judge: Hon. Yvonne Gonzalez Rogers
20 Magistrate Judge: Hon. Peter H. Kang

21 Date: January 26, 2026

Time: 8:00 AM

Place: Courtroom 1, 4th Floor

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

| | |
|--|----|
| TABLE OF AUTHORITIES | ii |
| MEMORANDUM OF POINTS AND AUTHORITIES | 1 |
| I. INTRODUCTION | 1 |
| II. ARGUMENT | 1 |
| A. Harford Has No Evidence of Causation..... | 1 |
| 1. Harford Must Show Both Cause-in-Fact and Proximate Causation..... | 2 |
| 2. Harford’s Evidence of Alleged Student “Mental Health” Harm Is Not Tied to Defendants’ Actionable Conduct..... | 3 |
| 3. Harford’s Evidence of “Diverted Instructional Time” Is Not Tied to Defendants’ Actionable Conduct. | 9 |
| 4. Harford’s Only Out-of-Pocket Costs Are Not Tied to Defendants’ Actionable Conduct. | 11 |
| B. Harford Has No Evidence That a Failure To Warn Harmed the District. | 12 |
| 1. The “Heeding Presumption” Does Not Apply..... | 12 |
| 2. Even If the Heeding Presumption Applied, The Evidence Uniformly Shows that Harford Would Not Have Heeded Any Warning..... | 14 |
| C. Harford Fails To Demonstrate Recoverable Past Damages..... | 16 |
| 1. Harford Cannot Recover Damages for Diverted Time. | 16 |
| 2. The District Has No Competent Evidence of Out-of-Pocket Expenses. | 17 |
| D. The Hoover Plan Is Not a Proper Abatement Remedy Under Maryland Law. | 18 |
| E. Harford Cannot Show It Is Reasonably Certain To Suffer Future Damages..... | 20 |
| III. CONCLUSION..... | 20 |

TABLE OF AUTHORITIES

CASES

| | |
|--|--------|
| <i>Adams v. Comm’rs of Trappe,</i> 102 A.2d 830 (Md. 1954) | 18 |
| <i>Aerotec Int’l v. Honeywell Int’l,</i> 836 F.3d 1171 (9th Cir. 2016) | 4 |
| <i>AGV Sports Grp., Inc. v. Protus IP Sols., Inc.,</i> 10 A.3d 745 (Md. 2010) | 16 |
| <i>Bank of N.Y. Mellon v. Lewis,</i> 796 F. App’x 956 (9th Cir. 2020) | 2 |
| <i>Courtney v. Canyon Television & Appliance Rental, Inc.,</i> 899 F.2d 845 (9th Cir. 1990) | 10 |
| <i>Davidson v. Miller,</i> 344 A.2d 422 (Md. 1975) | 20 |
| <i>DiLeo v. Nugent,</i> 592 A.2d 1126 (Md. Ct. Spec. App. 1991) | 20 |
| <i>Eagle-Picher Indus., Inc. v. Balbos,</i> 604 A.2d 445 (Md. 1992) | 13, 14 |
| <i>In re 3M Combat Arms Earplug Prods. Liab. Litig.,</i> 2023 WL 4352081 (N.D. Fla. July 5, 2023) | 13 |
| <i>KeraLink Int’l, Inc. v. Stradis Healthcare, LLC,</i> 2021 WL 5832242 (D. Md. Nov. 2, 2021) | 16 |
| <i>MacDonald v. Patriot, LLC,</i> 2017 WL 1788115 (Md. Ct. Spec. App. May 5, 2017) | 16 |
| <i>Maryland v. Exxon Mobil Corp.,</i> 406 F. Supp. 3d 420 (D. Md. 2019) | 3, 13 |
| <i>Mayor and City Council of Baltimore v. Purdue Pharma, L.P.,</i> No. 24-C-18-000515 (Md. Cir. Ct. Aug. 8, 2025) | 18, 19 |
| <i>McKenzie v. Anne Arundel County,</i> 2016 WL 4379127 (Md. Ct. Spec. App. Aug. 17, 2016) | 12, 13 |
| <i>Mitchell v. Rite Aid, Inc.,</i> 290 A.3d 1125 (Md. App. Ct. 2023), <i>cert. denied</i> , 296 A.3d 419 (Md. 2023) | 2, 3 |

| | | |
|----|--|------|
| 1 | <i>Mouradian v. City of Los Angeles</i> , | |
| 2 | 2023 WL 2558398 (C.D. Cal. Jan. 25, 2023) | 10 |
| 3 | <i>Palmer v. Hoffman</i> , | |
| 4 | 318 U.S. 109 (1943)..... | 8 |
| 5 | <i>Pierce v. Johns-Manville Sales Corp.</i> , | |
| 6 | 464 A.2d 1020 (Md. 1983) | 20 |
| 7 | <i>Safari Club Int'l v. Haaland</i> , | |
| 8 | 31 F.4th 1157 (9th Cir. 2022) | 14 |
| 9 | <i>Spaw, LLC v. City of Annapolis</i> , | |
| 10 | 156 A.3d 906 (Md. 2017) | 18 |
| 11 | <i>Stichting Pensioenfonds ABP v. Countrywide Fin. Corp.</i> , | |
| 12 | 802 F. Supp. 2d 1125 (C.D. Cal. 2011) | 2 |
| 13 | <i>U.S. Gypsum Co. v. Mayor & City Council of Balt.</i> , | |
| 14 | 647 A.2d 405 (Md. 1994) | 13 |
| 15 | <i>Under Armour, Inc. v. Ziger/Snead, LLP</i> , | |
| 16 | 158 A.3d 1134 (Md. Ct. Spec. App. 2017) | 16 |
| 17 | <i>Wagon v. Rocklin Unified Sch. Dist.</i> , | |
| 18 | 2024 WL 4654239 (E.D. Cal. Nov. 1, 2024)..... | 10 |
| 19 | <i>Yonce v. SmithKline Beecham Clinical Laboratories, Inc.</i> , | |
| 20 | 680 A.2d 569 (Md. Ct. Spec. App. 1996)..... | 2, 8 |

OTHER AUTHORITIES

| | | |
|----|---|--------|
| 21 | First Amendment | 1, 4 |
| 22 | Fed. R. Evid. 602 | 4 |
| 23 | Fed. R. Evid. 702 | 10, 21 |
| 24 | Restatement (Second) of Torts § 432(2) (A.L.I. 1965)..... | 2 |
| 25 | <i>Baltimore Asks Maryland Supreme Court to Hear Appeal in Opioid Lawsuit</i> , | |
| 26 | BALTIMORE BANNER (Nov. 12, 2025)..... | 19 |

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Harford claims to possess a “mountain of evidence” showing compulsive or problematic use by students, allegedly caused by Defendants’ platforms and their design choices. Harford Opp. (ECF No. 2395) 2. However, in the sections of its Opposition addressing “causation and mental health” and “diverted instructional time,” *id.* at 4–7, Harford does not cite anything linking Defendants’ platform features or design choices to Harford’s claimed injuries. Harford’s arguments do not respond to Defendants’ core arguments or address the actual conduct at issue. Moreover, Harford cannot rely on its failure-to-warn theory to circumvent this Court’s order holding that Section 230 and the First Amendment impose a “significant limitation on [P]laintiffs’ theories of recovery” by prohibiting the imposition of liability for third-party content and protected publishing activities. First SD Order (ECF No. 1267) 2. That argument fails because Defendants owed no duty to warn Harford, and there is no evidence showing that a lack of warnings caused Harford’s alleged harms.

As for damages, Harford concedes that it lacks evidence of property damage or lost psychologist and counselor time, and that it is not seeking compensation for new and increased mental health resources. Harford also cannot show that Defendants caused it to incur its claimed out-of-pocket costs for content filtering software because it concedes it purchased that software to comply with federal law. In support of its claim for lost teacher time, Harford relies solely on the Klein survey (Harford Opp. 13) which is both unreliable and inadmissible. *See* Harford Mot. (ECF No. 2296) 26–28. Finally, the few pages of deposition testimony Harford cites to support its purported “need for abatement” only illustrate that Harford’s claims arise from third-party content and conduct and were not caused by Defendants’ actionable conduct. Harford Opp. 13.

II. ARGUMENT

A. Harford Has No Evidence of Causation.

Harford claims that it has “considerable evidence” that Defendants’ actionable conduct caused three categories of harm: (1) mental health harms; (2) “diverted instructional time”; and

(3) certain “technology costs.”¹ Harford Opp. 2–3. But the few pieces of evidence Harford presents are not sufficient to create a triable issue on cause-in-fact because none of that evidence connects Defendants’ actionable conduct to any of Harford’s three alleged harms.

1. Harford Must Show Both Cause-in-Fact and Proximate Causation.

As a threshold matter, Harford contends that “apportioning liability” is not its burden under the substantial factor test and that “multiple tortfeasors cannot escape liability simply because all of their actions harmed the plaintiff.” *Id.* at 4. But the issue is not whether multiple tortfeasors *can* be liable—the issue is that Harford does not have sufficient evidence that any Defendant *was* a substantial factor in causing its alleged injuries. Under the substantial factor test, Harford must show that each Defendant’s actionable conduct was *both* a cause-in-fact and a legally cognizable cause of any diversion of financial resources. Put another way, Harford must demonstrate that, “standing alone,” each Defendant’s actionable conduct “would have wrought the identical harm.” *See Yonce v. SmithKline Beecham Clinical Laboratories, Inc.*, 680 A.2d 569, 575–76 (Md. Ct. Spec. App. 1996); Harford Mot. 14. “If there is no causation in fact, [this Court’s] . . . inquiry has reached a terminal point.” *Yonce*, 680 A.2d at 576.

To survive summary judgment, then, Harford must put forward evidence that each Defendant’s conduct “itself [was] sufficient to bring about harm to [Harford].” Restatement (Second) of Torts § 432(2) (A.L.I. 1965); *see also Mitchell v. Rite Aid, Inc.*, 290 A.3d 1125, 1157 (Md. App. Ct. 2023) (“[P]laintiff must show that the defendant’s conduct was a but-for cause of the plaintiff’s injuries, or, if one of multiple causes, that ‘it is more likely than not that *the defendant’s* conduct was a substantial factor in producing the plaintiff’s injuries.”) (emphasis

¹ By not raising it in its opposition, Harford waived any argument that it was harmed as a result of any “challenges” that were “promoted” by Defendants. *See Bank of N.Y. Mellon v. Lewis*, 796 F. App’x 956, 957 (9th Cir. 2020) (finding plaintiff waived argument “by failing to raise it in opposition to [defendant’s] summary judgment motion”); *Stichting Pensioenfonds ABP v. Countrywide Fin. Corp.*, 802 F. Supp. 2d 1125, 1132 (C.D. Cal. 2011) (“[F]ailure to respond in an opposition brief to an argument put forward in an opening brief constitutes waiver or abandonment in regard to the uncontested issue.” (citations omitted)). Furthermore, Harford does not and cannot dispute that its corporate representative could not identify such evidence. *See generally* Harford Mot. 18–19; First SD Order 25. For other arguments Harford waived, *see infra* n.4 (filters), p.16 (diverted counselor and psychologist time), and n.9 (property damages).

1 added) (citation omitted)), *cert. denied*, 296 A.3d 419 (Md. 2023) (Table). It is not sufficient for
 2 Harford to show that the combined effects of Defendants’ actions caused Harford’s injury. *See*
 3 *Maryland v. Exxon Mobil Corp.*, 406 F. Supp. 3d 420, 455 (D. Md. 2019) (rejecting State’s
 4 argument that it plausibly alleged causation under the substantial factor test based on allegations
 5 that “defendants are collectively responsible” for contamination). Harford cannot satisfy this test
 6 because it has not shown—or even attempted to show—“that any single defendant’s conduct was
 7 *sufficient* to cause its injury,” *id.* (emphasis added), or even some subset of its injuries.

8 Thus, this Court should grant summary judgment. Harford’s own cited cases compel that
 9 result. *See, e.g.*, Harford Opp. 4 (citing *Mitchell*, 290 A.3d at 1157–58 (granting summary
 10 judgment on cause-in-fact because “the evidence produced . . . failed to generate any material
 11 issue of fact,” and noting that although plaintiffs’ “expert[] identified a number of issues with
 12 [defendant’s] security protocols, he could not identify any causal link between the perceived
 13 breaches and [plaintiffs’] injuries”)).

14 **2. Harford’s Evidence of Alleged Student “Mental Health” Harm Is Not** 15 **Tied to Defendants’ Actionable Conduct.**

16 Harford begins its brief by discussing mental health harms to students allegedly caused
 17 by Defendants. But it concedes that it does “not seek compensation for expanded mental health
 18 resources beyond the lost time for staff providing those resources.” Om. Opp. (ECF No. 2414-1)
 19 198. Harford cannot recover for mental health harms to students without some evidence that
 20 those harms caused financial injury to Harford. *See* Harford Mot. 24; First SD Order 19–20.
 21 Because Harford concedes its claim for expanded mental health resources, summary judgment in
 22 Defendants’ favor is warranted on Harford’s claim that they caused it to expend resources on
 23 alleged student mental health harms.

24 But the Opposition also makes clear that there is no evidence that Defendants’ actionable
 25 conduct caused any alleged student mental health harms. Harford claims it need not show that
 26 Defendants’ actionable conduct, as opposed to content, caused its alleged harms because “third-
 27 party content is []admissible at trial.” Harford Opp. 3. But Defendants did not argue one way or
 28 the other whether such evidence is admissible or not because of Section 230 or the First

1 Amendment. They argued that, per this Court’s orders, Defendants’ publication of third-party
 2 content cannot form the basis of liability. Harford Mot. 11–13. But that is what Harford relies
 3 upon, and it cannot survive summary judgment.

4 ***Testimony from Bernard Hennigan, Executive Director of Student Support Services.***

5 Harford relies heavily on Hennigan in an attempt to survive summary judgment, but when asked
 6 how social media has harmed students, Hennigan gave examples of content-related harms: he
 7 explained that students experienced “dysregulation [as] a result of, in some cases, *things that*
 8 *they’ve seen, done, posted been posted about them* on social media.” Harford Mot. Ex. 28
 9 (Hennigan Dep.) (ECF 25-30) 60:8–22 (emphasis added).² Even if these vague allegations could
 10 support Harford’s claims, they are plainly barred by Section 230 under this Court’s orders.

11 The rest of Hennigan’s testimony cited by Harford is anecdotal speculation that fails to
 12 connect any of the alleged harms to Defendants’ actionable conduct, and “anecdotal speculation
 13 and supposition are not a substitute for evidence” that can survive summary judgment. *Aerotec*
 14 *Int’l v. Honeywell Int’l*, 836 F.3d 1171, 1174 (9th Cir. 2016) (granting summary judgment on that
 15 basis). For example, Hennigan testified that “we have not seen this drastic change in the mental
 16 health of our children . . . over the last hundred years that we have seen in this very short window
 17 since social media came on the rise,” Harford Opp. Ex. 4 (Hennigan 30(b)(6) Dep.) (ECF No.
 18 2400-6) 155:10–19, but Hennigan has no personal knowledge or any other basis to opine
 19 regarding shifts in student mental health over the past century. *See* Fed. R. Evid. 602.

20 He also opined that “students have become so addicted to getting onto their social media
 21 on their phone that someone’s desire to take that from them is equivalent to taking a drug from a
 22 drug addict.” Harford Opp. 1 (citing Harford Opp. Ex. 4 (Hennigan 30(b)(6) Dep.) (ECF No.
 23 2400-6) 109:8–15). Not only does Hennigan lack any expertise in whether social media is the
 24 “equivalent to taking a drug,” he could not give *any* examples of students who are “addicted to
 25 getting on their social media”—let alone students’ alleged compulsive use of Defendants’
 26 platforms or the impact of that use on students’ mental health. *See* Harford Opp. Ex. 15 (Hennigan

27 _____
 28 ² Cited ECF numbers are from the MDL docket (No. 4:22-md-03047-YGR), unless citing exhibits
 to Defendants’ Harford Motion, which are from the Harford docket (No. 4:23-cv-03065-YGR).

1 Dep.) (ECF 2400-17) 114:2–5 (never treated private practice patients for “social media
 2 addiction”); *id.* at 16:3–8 (never diagnosed any Harford student with “social media addiction”);
 3 *id.* at 125:18–126:12 (unable to identify data showing how many Harford students are addicted
 4 to social media).

5 In fact, Hennigan testified that Harford keeps extensive records of students’ behavioral
 6 and mental health concerns and treatment, including: school-based mental health data and reports
 7 (“SBMH Reports”); threat and risk assessments; suicide ideation reports; attendance and
 8 discipline dashboards; psychological testing reports; documentation from “reintegration
 9 meetings” after a student hospitalization; the Wellness Needs Assessment; bullying, harassment,
 10 and intimidation reports; and reports provided to the Harford County Health Department. *See*
 11 Harford Opp. Ex. 4 (Hennigan 30(b)(6)) (ECF No. 2400-6) 24:7–28:1, 45:3–22. He specifically
 12 noted that the SBMH Reports would reflect how many students were treated or counseled for
 13 social media addiction. *Id.* at 47:14–19, 48:7–49:11. Neither the SBMH Reports, nor any of the
 14 other types of records referenced, contain [REDACTED]

15 [REDACTED]
 16 [REDACTED].³ *See* Harford Mot. Ex. 25
 17 (2022-23 SBMH Data) (ECF 25-27); *see also* Harford Mot. 6–8, 21–22; Harford Opp. 4–6. And
 18 despite overseeing Harford’s psychology and counseling departments, Hennigan could not recall
 19 *any* discussions with Harford students—other than his children’s friends—during which a student
 20 reported having “issues with getting off social media.” Harford Opp. Ex. 15 (Hennigan Dep.)
 21 (ECF No. 2400-17) 11:9–15, 119:18–120:16.

22 In an attempt to move Hennigan’s testimony out of the realm of speculation, Harford
 23 argues that its claims are based on Hennigan’s “first-hand” observations—for example, the
 24 “change” he has seen “in both boys and girls” purportedly caused by social media. Harford Opp.
 25 4–5. But Harford omitted portions of Hennigan’s testimony specifying that he attributed those

26
 27 ³ Of these records, Harford cites only the Wellness Needs Assessment. Harford Opp. 5–6 (citing
 28 Harford Opp. Ex. 9 (HCPS_00027780) (ECF No. 2400-11)). As discussed above, that document
 does not link the alleged harm to *Defendants’ platforms*, let alone their actionable conduct.

1 changes to camera phones, *not* Defendants’ platforms or even social media broadly: “I spoke a
 2 lot today about the—our girls and our females, and *when the forward-facing camera came out*,
 3 depression, anxiety, the suicides skyrocketed.”⁴ Harford Opp. Ex. 4 (Hennigan 30(b)(6) Dep.)
 4 (ECF No. 2400-6) 155:20–23 (emphasis added). Hennigan also testified that he has observed that
 5 the rate at which boys are “getting their driver’s license, getting jobs, going outside and playing,
 6 . . . [and] dating” all “dramatically dropped . . . in the last several years when social media came
 7 on the rise.” Harford Opp. 5 (quoting Harford Opp. Ex. 4 (Hennigan 30(b)(6) Dep.) (ECF No.
 8 2400-6) 156:8–16). None of that has anything to do with harm *to Harford*, but, in any event,
 9 Hennigan did not say how Defendants’ platforms (or any feature of those platforms) contributed
 10 to this change in behavior; nor did he say how boys’ changed behavior was driving increased
 11 mental health costs, Harford Opp. Ex. 4 (Hennigan 30(b)(6) Dep.) (ECF No. 2400-6) 154:17–
 12 156:23, 157:14–158:21, which Harford expressly disclaimed, *see* Om. Opp. 196–199. In fact, as
 13 part of the same monologue, Hennigan attributed students’ mental and behavioral health harms
 14 to issues *other* than students’ use of Defendants’ platforms. For example, Hennigan blamed
 15 *parents’* cell phone use for their children’s mental and behavioral health issues. *See id.* at 156:20–
 16 158:16 (attributing students’ behavioral changes to mothers who are not “looking [their] child in
 17 the eyes when [they] breast-feed” because “[i]f you’re going to look at your phone instead of look
 18 at your child, they will be permanently impacted”); *see also id.* at 157:14–4 (adding that parents
 19 are “not taking the initiative” by, for example, “not teaching them their letters”).

20 **“District leaders” statements to Dr. Hoover.** Harford cites Dr. Hoover’s unrecorded
 21 “qualitative interviews” with “District leaders” during which those administrators purportedly
 22 stated that there has been a “decline in our students’ ability to appropriately socialize with each
 23 other because so many of their interactions are with *a phone*.” Harford Opp. 5 (quoting Harford
 24 Opp. Ex. 7 (Hoover Harford Rep.) (ECF 2400-9) ¶ 51) (emphasis added). Although Dr. Hoover

25
 26 ⁴ Although the Districts discuss the existence of filters in their Omnibus Opposition, *see* Om.
 27 Opp. 51–53, 103–06, 143–44, 182–84, Harford does not dispute that it has no evidence that it
 28 suffered any harm as a result of a Defendant’s filter, *see* Harford Mot. 19. Therefore, each
 Defendant is entitled to summary judgment on Harford’s claims based on filters. *See supra* note
 1 (compiling waiver cases).

disclosed which administrators she interviewed, she anonymized her notes—meaning she does not know which quote came from which administrator. *See* SD Daubert Mot. Ex. 65 (Hoover Dep. Vol. II) (ECF No. 2297-68) 577:3–19. In addition to being impermissible hearsay, *see* Om. Reply Part II.A.2, this evidence does not specifically identify Defendants’ platforms (let alone any actionable conduct), or even social media broadly, and it is not linked back to any alleged financial harm to Harford.

A 2023 Wellness Needs Assessment. Harford cites a student survey reporting that 41% of students spend two to six hours “looking at a screen outside the school day” and some spend more than six hours on screens. Harford Opp. 5 (quoting Harford Opp. Ex. 9 (HCPS_00027780) (ECF No. 2400-11) (emphasis added)).⁵ That survey did not even ask what type of screens students were using or how they were using them (watching movies? browsing the internet? playing video games? doing homework?), *see* Harford Opp. Ex. 9 (HCPS_00027780) (ECF No. 2400-11) -801, and so cannot establish causation with respect to any Defendant’s actionable conduct. Moreover, Harford does not tie this survey about screen time outside the school day to its alleged financial harms.

Focus Group Report on Student Cell Phones. Harford cites its Strategic Focus Group Report on Student Cell Phones, which collects “personal opinions and experience[s],” Harford Opp. Ex. 10 (HCPS_00174744) (ECF No. 2400-12) -747, from “HCPS stakeholders regarding student *cell phone use*,” Harford Opp. 5 (emphasis added). Harford claims this report “provides evidence of the *mental health harms* and *disruptive effects* of social media.” *Id.* (emphasis added). But the report *does not* tie social media (let alone each Defendants’ platform) to any “mental health harms” or “disruptive effects.” The report never mentions Defendants. *See generally* Harford Opp. Ex. 10 (HCPS_00174744) (ECF No. 2400-12). The report lists 25 perceived disadvantages of *cell phone use* during school, such as: “Access to inappropriate websites and

⁵ Harford accuses Defendants of “ignor[ing]” this documentary evidence. Harford Opp. 5. In fact, Defendants explained why this evidence was insufficient in their opening Motion and even attached the Wellness Needs Assessment as an Exhibit. *See* Harford Mot. 21; Harford Mot. Ex. 36 (HCPS_00046480) (ECF No. 25-38).

content,” “Disengagement,” “Class disruption,” and “Cyberbullying and harassment.” *Id.* at - 748. Only two of the listed “disadvantages” were related to social media. *See id.* First, it listed the “Influence of social media” as one potential disadvantage of cell phones in school. *Id.* But the report does not explain what that “[i]nfluence” was, *see id.*, so it cannot establish a link to each Defendants’ actionable conduct *or* students’ alleged mental health harms. The only other “social media”-related disadvantage listed is plainly about content. *Id.* (“Unwanted sharing of media through airdrop, texting, and social media.”); *see* PI Order (ECF No. 430) 18 (discussing case law holding that “private messaging functions do fall within the publishing umbrella”). Elsewhere in the Opposition, Harford cites some of the other 23 listed “drawbacks.” Harford Opp. 7 (listing, among others, “Defiance,” “Increased cognitive load,” and “Inability to focus”). But Harford acknowledges, as it must, that the report merely found that those are potential disadvantages of “*student cell phone use*” generally. *Id.* (emphasis added). In any event, the report is inadmissible hearsay, aggregating anonymous “personal opinions” from teachers, administrators, parents, and students in a self-serving report. Harford Opp. Ex. 10 (HCPS_00174744) (ECF No. 2400-12) -747; *see also* *Palmer v. Hoffman*, 318 U.S. 109, 113–14 (1943) (“[T]he fact that a company . . . record[s] its employees’ versions of their accidents does not put those statements in the class of records made ‘in the regular course’ of the business.”).

* * *

Harford’s purported “considerable evidence,” Harford Opp. 2, does not mention any Defendant *period*, much less any one of their platforms’ actionable features. Harford cites prior studies by its experts for the sweeping proposition that “when students use their cellphones, it is primarily to use social media.” *Id.* at 7. Expert testimony about teens’ social media use and school-day cell phone use (nationwide) do not support the substantial logical leap that Harford asks the Court (and jury) to make—that this data reflects *Harford students’* use of *Defendants’ platforms and their at-issue features*. Harford has thus entirely failed to show that, “standing alone,” each Defendant’s actionable conduct “would have wrought the *identical* harm.” *See Yonce*, 680 A.2d at 575–76 (emphases added).

Moreover, while Harford cites to testimony condemning “social media,” this evidence

1 fails to demonstrate a nexus between each Defendants’ platform, students’ alleged mental health
 2 harms, and Harford’s alleged financial harms. Harford admits that it does not have *any* evidence
 3 reflecting how many students allegedly suffer from mental health harms related to social media
 4 generally, nor to any of the at-issue features. *See* Harford Mot. 6–8; Harford Opp. 3.

5 **3. Harford’s Evidence of “Diverted Instructional Time” Is Not Tied to**
 6 **Defendants’ Actionable Conduct.**

7 Harford also fails to identify any evidence that Defendants’ actionable conduct caused its
 8 employees to lose the value of “instructional time”:

9 *Testimony from Superintendent Sean Bulson.* Harford repeatedly mischaracterizes
 10 Bulson’s testimony. Harford claims that he “testified that *social media platforms* are ‘constantly
 11 present in our classrooms and . . . a challenge that the teachers every day struggle with how to
 12 address.’” Harford Opp. 6 (emphasis added) (quoting Harford Opp. Ex. 5 (May 9, 2025 Bulson
 13 Dep.) (ECF No. 2400-7) 94:5–19). He did not. Bulson’s testimony referred explicitly to cell
 14 phone use broadly, not social media use specifically:

15 Q. Have you spoken with any principal or assistant principal about
 16 the amount of time they spend on students’ use of *cell phones or*
personal electronic devices?

17 A. Again, explicit conversations just on that topic, *no* . . . [But] it’s
 18 something that’s constantly present in our classrooms and, you
 19 know, a challenge that the teachers every day struggle with how to
 address.

20 Harford Opp. Ex. 5 (May 9, 2025 Bulson Dep.) (ECF No. 2400-7) 94:5–19 (emphases added).

21 Harford then inaccurately asserts that Bulson testified that “[e]very minute a teacher
 22 spends getting a child off of *social media* is a minute that ‘cuts into instructional time.’” Harford
 23 Opp. 6 (emphasis added) (quoting Harford Opp. Ex. 5 (May 9, 2025 Bulson Dep.) (ECF No.
 24 2400-7) 84:3–15). When, in fact—as Harford quotes on the first page of its Opposition—Bulson
 25 said that “trying to take a *phone* from a student who is noncomplying, essentially that cuts into
 26 instructional time.” Harford Opp. Ex. 5 (May 9, 2025 Bulson Dep.) (ECF No. 2400-7) 84:3–10
 27 (emphasis added); Harford Opp. 1. Harford’s persistent muddling of the record is a tacit
 28

acknowledgment that it cannot tie Defendants’ actionable conduct to its alleged harms.

Hearsay repeated by Hennigan. Harford cites testimony that is undisputedly inadmissible hearsay; Hennigan testified that he “*recalled a teacher telling him* that ‘it was a struggle to keep the attention of the students in part because of wanting to access their phones during the day and in part because of their rewiring of their brain due to social media outside the school day.’” Harford Opp. 6 (emphasis added) (quoting Harford Opp. Ex. 15 (Hennigan Dep.) (ECF No. 2400-17) 123:21–124:1);⁶ *see also Courtney v. Canyon Television & Appl. Rental, Inc.*, 899 F.2d 845, 851 (9th Cir. 1990) (hearsay assertions “are inadmissible at summary judgment”).

Focus Group Report on Student Cell Phones. Harford again cites the Strategic Focus Group Report on Student Cell Phones. *See* Harford Opp. 6–7. As explained above, the report is inadmissible. And, in any event, this report makes only passing references to the “influence of social media”—without tying this alleged “influence” to Defendants’ actionable conduct *or* the alleged diverted instructional time. *Id.* (quoting Harford Opp. Ex. 10 (HCPS_00174744) (ECF No. 2400-12) 6–8). Testimony and documents about cell phone use or the general “influence of social media” cannot meet Harford’s burden to establish that Defendants’ actionable conduct caused the alleged lost instruction time. *See infra* Part II.C.1.

Klein’s survey. Harford does not meaningfully respond to Defendants’ argument that Klein’s survey of certain Harford teachers cannot establish a causal link between Defendants’ actionable conduct and lost instruction time, relying only on the Districts’ Omnibus Opposition. *See* Harford Mot. 26–28; Harford Opp. 6. As discussed in Defendants’ Omnibus Reply, the Klein survey is inadmissible. *See* Om. Reply Part II.C.1.

Again, Harford has not cited any testimony or evidence about students’ use of Defendants’

⁶ This testimony is inadmissible for a second reason: as a lay witness, the lone teacher recalled by Hennigan cannot testify to whether social media can “rewire” a child’s brain. *See, e.g., Mouradian v. City of Los Angeles*, 2023 WL 2558398, at *3 (C.D. Cal. Jan. 25, 2023) (“[O]pinions regarding the basis for a PTSD diagnosis and the symptoms of such a diagnosis would likely require ‘scientific, technical, or other specialized knowledge’ that would bring such testimony within the scope of Rule 702.”); *Wagnon v. Rocklin Unified Sch. Dist.*, 2024 WL 4654239, at *3 (E.D. Cal. Nov. 1, 2024) (plaintiff’s mother could testify to her observations of the nonverbal plaintiff’s reactions to the defendant’s conduct, but not as to a “diagnosis, opinion, or the cause of [the plaintiff’s] alleged injuries.”).

platforms, much less the at-issue features—only testimony about cell phones or social media in general. Harford does not rely upon its [REDACTED]
[REDACTED]
[REDACTED]. See Harford Mot. 22 (citing Harford Mot. Ex. 24 (HCPS_00228706) (ECF No. 25-26) -706 (Harford disciplinary reports)); Harford Opp. 6–7. Harford simply fails to provide sufficient evidence to defeat Defendants’ motion.

4. Harford’s Only Out-of-Pocket Costs Are Not Tied to Defendants’ Actionable Conduct.

Harford seeks reimbursement only for the cost of certain firewall and internet-content filtering software—not for property damage or the costs of any increase in mental health services. Om. Opp. 196–199; *see also infra* Part II.C.2. But Harford cannot show that Defendants caused the District to incur these costs because it *does not dispute* that it is required to purchase this software to comply with federal law. See Harford Opp. 14; Harford Opp. Ex. 23 (HCPS_00055970) (ECF No. 2400-25) -972 (“The use of this filter system also allows Harford . . . to comply with the Children Internet Protection Act (CIPA).”). Harford also does not dispute that, in order to comply with CIPA, it has paid for an internet content filter every year since 2000—before any Defendant’s platform existed. See Harford Mot. Ex. 31 (May 29, 2025 Moore 30(b)(6) Dep.) (ECF No. 25-33) 32:9–34:11; Harford Opp. 14. The fact that Harford used a filter purchased for purposes of CIPA compliance to regulate students’ access to various websites (in this case, to *unblock* YouTube in 2020) does not establish that it purchased the filter because of Defendants. See Om. Opp. at 198 (claiming that Harford used its CIPA filter for “filtering specific to social media, not just what law requires” (citing Om. Opp. Ex. 598 (Mar. 14, 2025 Moore 30(b)(6) Dep.) (ECF 2349-78) 21:5–24:25)). These undisputed material facts are dispositive: Defendants’ conduct is not a cause-in-fact of this expense.⁷

⁷ Contrary to Harford’s assertions, Defendants do not “insist” that a “laundry list” of other “societal factors . . . are the *true* cause of Harford’s mental health crisis.” Harford Opp. 7 (emphasis added). Rather, Defendants merely pointed out that the record evidence tying these other problems to mental health harms underscores the *lack* of similar evidence concerning Defendants’ actionable conduct. See Harford Mot. 3–5; *see also* Harford Mot. Ex. 2 (May 15,

B. Harford Has No Evidence That a Failure To Warn Harmed the District.

For reasons explained in Defendants’ Harford Motion and Omnibus Reply (Harford Mot. 41–46; Om. Reply Part II.B.1), Defendants do not have a duty to warn Harford. But even if they did, Harford has no evidence that an alleged failure to warn caused it any damage. Harford Mot. 43–45. Recognizing its lack of evidence, Harford claims it does not need any because it can take advantage of the “heeding presumption” under Maryland law. See Harford Opp. 9–11. But under Maryland law, that presumption does not apply here, and even if it did, Defendants successfully rebutted it.

1. The “Heeding Presumption” Does Not Apply.

The heeding presumption does not apply for two independent reasons.

First, Maryland law is clear: “The [h]eeding [p]resumption arises in product liability cases.” *McKenzie v. Anne Arundel County*, 2016 WL 4379127, at *9 (Md. Ct. Spec. App. Aug. 17, 2016). Harford has not brought a product liability claim and previously argued to this Court that its claims “do not concern product liability law as they do not seek to recover for injuries suffered from a defective product.” Second SD Order (ECF No. 1332) at 19 (quoting ECF No. 668 at 30). As such, the heeding presumption is inapplicable here.

Maryland courts have rejected similar attempts to broaden the heeding presumption’s application outside the product liability context. In *McKenzie*, plaintiff argued on appeal that the trial court erred in refusing to instruct the jury on the heeding presumption in her negligence case against Anne Arundel County for its failure to maintain a stop sign. 2016 WL 4379127, at *8. The plaintiff urged “that the court’s failure to provide the instruction limited her ability to present to the jury the theory that she would have stopped at the stop sign had it been present, and thus to establish the effect of the County’s negligence.” *Id.* The Court of Special Appeals of Maryland

2025 Bulson Dep.) (ECF No. 27-1) 219:13–231:21 (listing “sources of . . . mental health challenges” including COVID-19; gun violence in schools; drug and alcohol abuse; poverty; homelessness; physical, emotional, and sexual abuse and trauma; racism; homophobia; and social and political movements); *see also* Harford Opp. Ex. 4 (Hennigan 30(b)(6) Dep.) (ECF No. 2400-6) 67:5–68:1 (agreeing it is “a pretty universally accepted conclusion” that bullying and cyberbullying—non-actionable third-party conduct—have negative impacts on students’ attention and behavior during class).

1 “d[id] not agree.” *Id.* “Because [the plaintiff’s] claims ar[o]se out of the law of negligence,” the
 2 Court “[saw] no basis upon which to conclude that the court erred in refusing to instruct the jury
 3 on a doctrine derived from products liability.” *Id.* at *9. Consistent with that case law, Harford’s
 4 cited cases discuss the heeding presumption in the context of a product liability claim. *See, e.g.,*
 5 *Exxon*, 406 F. Supp. 3d at 432; *In re 3M Combat Arms Earplug Prods. Liab. Litig.*, 2023 WL
 6 4352081, at *3 (N.D. Fla. July 5, 2023); *Eagle-Picher Indus., Inc. v. Balbos*, 604 A.2d 445, 469
 7 (Md. 1992). Having disclaimed bringing products liability claims, Harford cannot turn around
 8 and use a product-liability doctrine to save its lack of causation evidence.



9 *Second*, Harford does not cite any authority that would allow it to apply a presumption
 10 that students and parents would have acted differently in the face of an adequate warning and
 11 thereby avoided causing Harford’s alleged harms. Rather, as set forth by caselaw, the heeding
 12 presumption is “a presumption that *plaintiffs* would have heeded a legally adequate warning had
 13 one been given.” *U.S. Gypsum Co. v. Mayor & City Council of Balt.*, 647 A.2d 405, 413 (Md.
 14 1994) (emphasis added). Harford’s cited cases are exemplary. In *U.S. Gypsum* the City of
 15 Baltimore sued the maker of an asbestos-containing fireproofing spray for the costs of removing
 16 treated surfaces, alleging that, had it been warned earlier of the dangers of asbestos, it would have
 17 heeded the warning and begun remediation efforts sooner, thus saving money on the costs of the
 18 remediation. *Id.* at 408, 413. In *3M Combat*, the plaintiff, an individual soldier, provided
 19 evidence that a warning about the 3M earplugs’ defects would have prevented his auditory injuries
 20 because the Army would not have supplied them and, even if it had, he, personally, would not
 21 have used them. 2023 WL 4352081, at *3. Harford has presented no evidence regarding what
 22 students and parents would have done in the face of different warnings. In *Exxon*, a case involving
 23 strict liability, rather than negligent failure to warn, the state, suing in its *parens patriae* capacity,
 24 alleged at the pleading stage that citizens would have avoided gasoline blended with a cancer-
 25 causing agent had they been warned. 406 F. Supp. 3d at 433, 464. That case has no bearing here
 26 at the summary judgment stage in a non *parens patriae* case.

27 In order to prevent Harford’s alleged harms, not only would Harford have to have acted
 28 differently in the face of an adequate warning, but because it is not the end-user, students and

1 parents would also have to have acted differently in order to avoid the alleged mental health and
 2 classroom disruption harms. No case has ever allowed such a double-layer of presumption.

3 **2. Even If the Heeding Presumption Applied, The Evidence Uniformly**
 4 **Shows that Harford Would Not Have Heeded Any Warning.**

5 Even if one applied, Defendants rebutted any heeding presumption as a matter of law.
 6 *First*, the only thing Harford contends it would have done in the face of an adequate warning is
 7 establish a school-day cell phone ban earlier. Harford Opp. 10–11. This is pure attorney-
 8 argument, with no citation to any evidence. *See Safari Club Int’l v. Haaland*, 31 F.4th 1157,
 9 1176–77 (9th Cir. 2022) (“[B]are assertions unsupported by evidence in the record . . . cannot
 10 survive summary judgment.”). Moreover, Harford contradicts itself, stating that such a ban has
 11 not (and would not have) meant that students used Defendants’ platforms sufficiently less to
 12 reduce mental health harms or distractions in school. Harford Opp. 11. Harford says that “only
 13 time will tell how well it will work in the long term, particularly given that students continue to
 14 use social media outside of school,” and describes enforcing such a policy as “holding back a
 15 tsunami wave with your hand.” *Id.* Thus, even if the heeding presumption *could* apply here,
 16 Harford admits that it cannot show any actions it would have taken in response to such a warning
 17 would have avoided its alleged harms. *Eagle-Picher*, 604 A.2d at 469 (“[I]f a warning would not
 18 have prevented the harm from occurring then a defendant who failed to warn is not
 19 responsible. . . .”).

20 *Second*, to this day, Harford *encourages* students and teachers to use YouTube for
 21 educational purposes, and it does not block access to YouTube. Harford began allowing students
 22 to access YouTube on school networks and on school-issued devices in 2020 at the request of the
 23 Office of Curriculum Instruction. Harford Mot. Ex. 18 (Mar. 14, 2025 Moore 30(b)(6) Dep.)
 24 (ECF No. 25-20) 19:9–16; 21:3–14. As of 2025—approximately two years after Harford filed its
 25 lawsuit—Harford’s curriculum still includes YouTube as an “approved” and “*recommended*
 26 resource.” Harford Mot. Ex. 19 (May 9, 2025 Bulson Dep.) (ECF No. 25-21) 136:18–138:16
 27 (emphasis added); *see also* Harford Mot. Ex. 20 (HCPS_00537476) (ECF No. 25-22) -478 (“ 

1 [REDACTED]). A school-day cell phone ban would have no impact on that school-
2 approved use of YouTube—either in class or after hours as part of homework.

3 Nor does Harford dispute that it continues to use its Facebook, Instagram, and YouTube
4 accounts. Harford Opp. 11. In fact, Harford *continues to encourage* students to use Facebook,
5 Instagram, YouTube, and other social media platforms to follow Harford.⁸ See Harford Opp. Ex.
6 5 (May 9, 2025 Bulson Dep.) (ECF No. 2400-7) 119:9–19 (explaining use of Facebook,
7 Instagram, and YouTube to “shar[e] school system information” with “[s]tudents, parents, staff,
8 [and the] community” (emphasis added)); Harford Mot. Ex. 17 (HCPS_00114511) (ECF No. 25-
9 19) -511, -514 [REDACTED]

10 [REDACTED]). And Dr. Bulson testified that
11 he *continues to support* students’ use of social media. In 2019, a member of the Superintendent’s
12 Student Advisory pitched a social media campaign to raise student awareness about mental health
13 resources. Harford Opp. Ex. 5 (May 9, 2025 Bulson Dep.) (ECF No. 2400-7) 108:21–115:14;
14 *see also* Reply Ex. 1 (HCPS_00164400); Reply Ex. 2 (HCPS_00164401). When asked about this
15 proposal, Dr. Bulson testified that *to this day*, he “*would continue to support the idea*” of a social
16 media campaign to raise awareness of mental health resources amongst students. Harford Opp.
17 Ex. 5 (May 9, 2025 Bulson Dep.) (ECF No. 2400-7) 115:15–23, 118:11–119:8 (emphasis added);
18 *see also id.* at 115:25–116:9.

19 In light of this evidence of Harford’s ongoing use of Defendants’ platforms, there is no
20 basis for a jury to presume that Harford would have discontinued use of Defendants’ platforms
21 had Defendants warned Harford of the alleged harms—particularly when the District has known
22 about its alleged harms since filing this lawsuit and yet still uses Defendants’ platforms. *See Soc.*
23 *Media Cases*, Nos. JCCP 5255, 23STCV31485, at 5, 7–8 (Cal. Super. Ct. Nov. 5, 2025) (granting
24

25 ⁸ Harford argues that it does not promote its accounts on these platforms to students—citing
26 testimony from one fact witness (Communications Director Jillian Lader). Harford Opp. 11
27 (citing Harford Opp. Ex. 19 (Lader Dep.) (ECF No. 2400-21) 39:24–25). The testimony of one
28 fact witness does not negate the evidence that Harford itself—and many other Harford leaders—
promote those accounts to students. *See* Harford Opp. Ex. 5 (May 9, 2025 Bulson Dep.) (ECF
No. 2400-7) 119:9–19; Harford Mot. Ex. 17 (HCPS_00114511) (ECF No. 25-19) -511, -514.

1 motion for summary judgment as to plaintiffs’ negligent failure to warn claim where plaintiff
2 continued to use YouTube even after filing the lawsuit).

3 **C. Harford Fails To Demonstrate Recoverable Past Damages.**

4 **1. Harford Cannot Recover Damages for Diverted Time.**

5 As an initial matter, Harford concedes that it cannot recover its nearly \$1 million claimed
6 damages in diverted time for counselors and psychologists, as it failed to address the alleged
7 damages for those employee classifications in its Opposition. *Compare* Harford Mot. 28–29
8 (arguing that Harford relies on speculative estimates that are not tailored to Defendants’
9 actionable conduct) *with* Harford Opp. 6–7, 11–14 (addressing diverted teacher time but failing
10 to address Defendants’ arguments regarding Harford’s diverted counselor and psychologist time)
11 *and* Om. Opp. 201–05 (same); *see also supra* note 1 (compiling waiver cases).

12 As to the alleged “lost time” for teachers, Harford’s argument that it can recover damages
13 for diverted instructional time fails for three reasons: as a matter of law the District (1) cannot
14 recover damages for teachers’ performance of typical work duties; (2) does not present competent
15 evidence of “lost time”; and (3) cannot recover damages for alleged harms to students.

16 *First*, Defendants do not contend that actual damages can *never* arise from diverted time
17 but rather that diverted time is only recoverable if Harford points to actual loss it suffered as a
18 result. Contrary to Harford’s argument, for teachers, managing distractions and teaching
19 classroom expectations is, and always has been, part of the job. *See* Harford Mot. 25–26. None
20 of the cases Harford cites grant damages for the performance of typical work duties. *MacDonald*
21 *v. Patriot, LLC*, 2017 WL 1788115, at *11–12 (Md. Ct. Spec. App. May 5, 2017) (finding
22 evidence of damages where employee time was diverted away from otherwise *billable work* to
23 investigate Mr. MacDonald’s actions); *see also AGV Sports Grp., Inc. v. Protus IP Sols., Inc.*, 10
24 A.3d 745, 752 (Md. 2010) (noting that actual damages could involve “lost employee *productivity*
25 associated with the receipt, review, and disposal of the unwanted faxes” (emphasis added));
26 *Under Armour, Inc. v. Ziger/Snead, LLP*, 158 A.3d 1134, 1135, 1138–39 (Md. Ct. Spec. App.
27 2017) (the cost of time diverted away “from *income-producing* work to assist counsel in preparing
28 a lawsuit” constitutes a measure of injury (emphasis added)); *KeraLink Int’l, Inc. v. Stradis*

1 *Healthcare, LLC*, 2021 WL 5832242 (D. Md. Nov. 2, 2021) (time diverted to address
 2 contamination issues), *aff'd sub nom. KeraLink Int'l, Inc. v. Stradis Healthcare, LLC*, 60 F.4th
 3 175 (4th Cir. 2023). Unlike the entities in those cases, Harford cannot show it suffered any actual
 4 loss resulting from the alleged diversion of teacher time.

5 *Second*, Harford doubles down on Klein's teacher time survey without adequately
 6 addressing its crucial flaws. *See* Harford Opp. 6, 13; Harford Mot. 26–28. Harford does not
 7 contest that Klein's survey is based on unsworn and post-hoc time estimates from just 10% of
 8 teachers. Harford Mot. 27; Harford Opp. 13. For the reasons elaborated in Defendants' Motion
 9 to Exclude the School District Experts (ECF No. 2297-1, at 10–18) and Defendants' Omnibus
 10 Reply, the Klein survey is unreliable and inadmissible. Harford has therefore failed to meet its
 11 burden of proving its damages are actual and not speculative.

12 *Third*, the alleged diverted instructional time harms students (if anyone), not the District.
 13 Harford claims that Maryland courts allow for the recovery of costs for diverted employee time
 14 because diverted time prevents employees from rendering *other services* to the District. *See* Om.
 15 Opp. 203. Yet Harford points to purported lost services (educational instruction) that teachers
 16 render *to students*. Harford suggests that its damages arise because classroom disruptions
 17 interfere with its mission “to help its students ‘attain academic and personal success in a safe and
 18 caring environment.’” Harford Opp. 13. But Harford cites no authority that interference with its
 19 ability to help students attain academic and personal success, without some concrete loss to *the*
 20 *District*, is a compensable injury. Any injury for the alleged loss of students' learning is a
 21 derivative injury, at most. *See* Harford Mot. 41.

22 **2. The District Has No Competent Evidence of Out-of-Pocket Expenses.**

23 Harford seeks “out-of-pocket” expenses related only to network filtering and monitoring
 24 software. Harford Mot. 8; Om. Opp. 197. Harford cannot recover these expenses given the
 25 undisputed evidence that Harford incurred them to comply with federal law, *supra* Part II.A.4.
 26 Harford admittedly does *not* seek any other out-of-pocket costs, including expenses associated
 27 with (1) technology lockers, Om. Opp. 196 n.12; (2) “expanded mental health resources” other
 28 than “lost time for staff providing those resources,” *id.* at 198; or (3) social emotional learning

1 programming, *id.* at 199.⁹ Therefore, Harford’s reference to increased “mental health salaries”
 2 and growing demand for school-based mental health services, Harford Opp. 13–14, is not relevant
 3 to its out-of-pocket costs because it admittedly does not seek “compensation for expanded mental
 4 health resources beyond the lost time for staff providing those resources,” Om. Opp. 198–99.¹⁰

5 **D. The Hoover Plan Is Not a Proper Abatement Remedy Under Maryland Law.**

6 Harford’s Opposition hardly references abatement and does not discuss Dr. Hoover’s 15-
 7 year “strategic plan.” And for good reason: Harford cannot identify any binding Maryland
 8 decision that authorizes the remedy it seeks. As discussed in the Omnibus Reply, in the Omnibus
 9 Opposition, the Districts cite two Maryland cases, both of which are classic nuisance cases where
 10 abatement meant an injunction to remove the instrumentality of the nuisance, not paying to treat
 11 downstream physical or mental injuries. *See, e.g., Adams v. Comm’rs of Trappe*, 102 A.2d 830,
 12 837 (Md. 1954) (defendant ordered to remove gas pump that was blocking public sidewalk and
 13 was in violation of a municipal ordinance); *Spaw, LLC v. City of Annapolis*, 156 A.3d 906, 931
 14 (Md. 2017) (property owner in violation of municipal historic preservation zoning ordinance
 15 could be required to file an application for a certificate of approval prior to a building rehab); *see*
 16 *also* Om. Reply Part II.D.2.¹¹ Instead of pointing to governing appellate authority, Harford looks
 17 to a singular trial court decision, *Mayor and City Council of Baltimore v. Purdue Pharma, L.P.*,

18
 19 ⁹ Harford does not dispute, and therefore concedes, that it is not entitled to recover for property
 20 damage. *Compare* Harford Mot. 32–33 *with generally* Harford Opp; *see also supra* note 1.

21 ¹⁰ Even if Harford were seeking damages for mental health resources, any claim to past damages
 22 for additional mental health personnel would be entirely speculative, as Harford has not offered
 23 any evidence of what portion of the increased budget is allegedly attributable to Defendants’
 24 actionable conduct as opposed to the other “myriad of issues” that affect the budget. Harford
 Opp. 13–14, Ex. 4 (Hennigan 30(b)(6) Dep.) (ECF No. 2400-6) 43:13–20. None of Harford’s
 damages experts calculated the costs of those salaries and put those forward as costs that Harford
 is seeking. Harford Mot. 29–30; *see also id.* at 25 n.6.

25 ¹¹The Districts’ claim that dicta from *Spaw* “recognized . . . that requiring the defendant to not
 26 just halt the offending conduct but affirmatively undertake action to undo the effects of the
 27 violation would be an appropriate form of abatement.” Om. Opp. 214. *Spaw* did not recognize
 28 that. Instead, it said that “[a]batement is ‘the act of eliminating or nullifying,’” and that the City
 could seek “to eliminate Spaw’s violation of not complying with the administrative process—
 filing an application for a Certificate of Approval—by compelling it to do so.” 156 A.3d at 931
 (citation omitted).

No. 24-C-18-000515, slip op. at 1, 23 (Md. Cir. Ct. Aug. 8, 2025), which is currently being appealed by the City of Baltimore,¹² and which Defendants distinguished in their opening brief. *See* Om. Opp. 213; Harford Mot. 38 n.13.

Even if the Hoover Plan were an appropriate abatement remedy, Harford’s Opposition cites only a couple pages of deposition testimony to support its “need for abatement.” *See* Harford Opp. 14; Harford Opp. Ex. 18 (Brooks Dep.) (ECF No. 2400-20) 127:23–128:8. Harford highlights that its Supervisor of Safety and Security Donovan Brooks testified that many issues between students “have a nexus to social media,” Harford Opp. Ex. 18 (Brooks Dep.) (ECF No. 2400-20) 128:5–8, and estimated that “anywhere from 40 to 45 percent of [his staff’s] time is dealing with students and situations where we’re finding out conflicts either originated on using social media, or if they started in school, continue via the use of social media in these conflicts,” *id.* at 127:23–128:4. These statements have nothing to do with supporting Harford’s need for the 15-year, \$1 billion strategic plan. But they do make plain that Harford’s claimed injuries result from third-party content and conduct, not Defendants’ actionable conduct. When asked what he meant by “nexus to social media,” Brooks testified that he was talking about students “[m]aking *threats* on social media; using social media *to bully*, using social media to make fake accounts and *put[ting] out embarrassing pictures and information* about other students; [and] going on social media to *discuss private and personal things* about students and their families.” *Id.* at 128:9–17 (emphases added). This Court already held that Section 230 bars any theories that, like these, “would necessarily require defendants to publish less third-party content.” PI Order 16.

If anything, Harford’s Opposition highlights why the lengthy and costly abatement plan is unnecessary. Harford admits that “only time will tell how well [the cell phone ban] will work in the long term.” Harford Opp. 11. Dr. Hoover did not account for this cell phone ban in her plan, and Harford therefore cannot demonstrate that a billion-dollar, 15-year strategic plan is needed when the cell phone ban may ultimately significantly reduce its claimed injuries. *See generally* Harford Mot. Ex. 32 (Am. Hoover Harford Rep.) (ECF No. 25-34); Harford Mot. Ex.

¹² Madeleine O’Neill, *Baltimore Asks Maryland Supreme Court to Hear Appeal in Opioid Lawsuit*, BALTIMORE BANNER (Nov. 12, 2025), <https://tinyurl.com/sb8kez6y>.

41 (2d Am. Leslie Rep.) (ECF No. 25-43); *see also* Harford Mot. 33–41; Om. Reply Part II.D.

E. Harford Cannot Show It Is Reasonably Certain To Suffer Future Damages.

Though Harford does not dispute that future damages are only recoverable where they are “reasonably certain,” Om. Opp. 206 (citing *Pierce v. Johns-Manville Sales Corp.*, 464 A.2d 1020, 1026 (Md. 1983) and *Davidson v. Miller*, 344 A.2d 422, 427 (Md. 1975)), it presents no evidence of reasonably certain future expenditures. Harford does not say with reasonable certainty what expenses it *will incur* a decade into the future due to injuries it has allegedly already suffered as a result of Defendants’ conduct; nor could it without knowing how technology will evolve, what new interventions will be available, or how well its cell phone ban will work. *See* Harford Opp. 11 (“[O]nly time will tell how well [the policy] will work in the long term”); *Davidson*, 344 A.2d at 427 (“[T]estimony concerning an injury which may only possibly ensue is something too conjectural for the jury to receive or consider”). For the reasons explained above, in Defendants’ Harford Motion, and in the Rule 702 briefing, Dr. Hoover’s strategic plan does not fill that gap. Harford Mot. 39–41; *see also Davidson*, 344 A.2d at 427 (finding error “to receive into evidence [expert’s] speculative opinion on the issue of [plaintiff’s] potential problem”). Harford further misses the mark for a separate reason: Harford suggests that the fact that Dr. Hoover “opines that her detailed, 15-year strategic plans are necessary to prevent these future injuries,” and Dr. Leslie quantified the costs of implementation is sufficient to establish a genuine issue of material fact on future damages. *See* Om. Opp. 206. But that gets the analysis backwards: The question is not whether Harford can show that a \$1.1 to \$1.5 billion dollar plan can *prevent future injuries*, the question is whether it is reasonably certain that Harford *will incur* future costs as a result of its *existing injuries*. *See DiLeo v. Nugent*, 592 A.2d 1126, 1134–35 (Md. Ct. Spec. App. 1991) (jury could determine future medical expenses for an existing injury the plaintiff “*sustained*” (emphasis added)).

III. CONCLUSION

For the foregoing reasons, as well as the reasons stated in Defendants’ Harford Motion and Omnibus Reply, Defendants are entitled to summary judgment on Harford’s claims.

1 Dated: December 5, 2025

2 **WILLIAMS & CONNOLLY LLP**

3 /s/ Ashley W. Hardin

4 JOSEPH G. PETROSINELLI, *pro hac vice*

5 jpetrosinelli@wc.com

6 ASHLEY W. HARDIN, *pro hac vice*

7 ahardin@wc.com

8 J. ANDREW KEYES, *pro hac vice*

9 akeyes@wc.com

10 NEELUM J. WADHWANI (SBN 247948)

11 nwadhwani@wc.com

12 WILLIAMS & CONNOLLY LLP

13 680 Maine Avenue SW

14 Washington, DC 20024

15 Tel.: (202) 434-5000

16 *Attorneys for Defendants YouTube, LLC and*

17 *Google LLC*

COVINGTON & BURLING LLP

/s/ Christian J. Pistilli

ASHLEY M. SIMONSEN (Bar No. 275203)

COVINGTON & BURLING LLP

1999 Avenue of the Stars

Los Angeles, California 90067

Telephone: (424) 332-4800

Facsimile: (424) 332-4749

Email: asimonsen@cov.com

PHYLLIS A. JONES (*pro hac vice*)

PAUL W. SCHMIDT (*pro hac vice*)

CHRISTIAN J. PISTILLI (*pro hac vice*)

COVINGTON & BURLING LLP

One City Center

850 Tenth Street, NW

Washington, DC 20001-4956

Telephone: (202) 662-6000

Facsimile: (202) 662-6291

Email: pajones@cov.com

Email: pschmidt@cov.com

Email: cpistilli@cov.com

Attorneys for Defendants Meta Platforms, Inc.

f/k/a Facebook, Inc.; Facebook Holdings, LLC;

Facebook Operations, LLC; Meta Payments Inc.

f/k/a Facebook Payments Inc.; Meta Platforms

Technologies, LLC f/k/a Facebook Technologies,

LLC; Instagram, LLC; and Siculus LLC f/k/a

Siculus, Inc.

KING & SPALDING LLP

/s/ Bailey J. Langner

GEOFFREY M. DRAKE, *pro hac vice*

gdrake@kslaw.com

TACARA D. HARRIS, *pro hac vice*

tharris@kslaw.com

KING & SPALDING LLP

1180 Peachtree Street, NE, Suite 1600

Atlanta, GA 30309

Telephone: (404) 572-4600

Facsimile: (404) 572-5100

DAVID P. MATTERN, *pro hac vice*

dmattern@kslaw.com

KING & SPALDING LLP

1700 Pennsylvania Avenue, NW

Suite 900

Washington, D.C. 20006

Telephone: (202) 737-0500

Facsimile: (202) 626-3737

BAILEY J. LANGNER (SBN 307753)

blangner@kslaw.com

KING & SPALDING LLP

50 California Street, Suite 3300

San Francisco, CA 94111

Telephone: (415) 318-1200

Facsimile: (415) 318-1300

Attorneys for Defendants TikTok Inc., ByteDance Inc., ByteDance Ltd., TikTok Ltd., and TikTok, LLC

KIRKLAND & ELLIS LLP

/s/ Andrew M. Karp
ALLISON BROWN, *pro hac vice*
alli.brown@kirkland.com
KIRKLAND & ELLIS LLP
2005 Market Street, Suite 1000
Philadelphia, PA 19103
Tel.: (215) 268-5000

ANDREW M. KARP, *pro hac vice*
andrew.karp@kirkland.com
JESSICA DAVIDSON, *pro hac vice*
jessica.davidson@kirkland.com
JOHN J. NOLAN, *pro hac vice*
jack.nolan@kirkland.com
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Tel.: (212) 446-4800

MUNGER, TOLLES & OLSON LLP

JONATHAN H. BLAVIN (State Bar No.
230269)
Jonathan.Blavin@mto.com
MUNGER, TOLLES & OLSON LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105
Tel: (415) 512-4000

VICTORIA A. DEGTYAREVA (State Bar No.
284199)
Victoria.Degtyareva@mto.com
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, 50th Floor
Los Angeles, CA 90071
Tel.: (213) 683-9100
Facsimile: (213) 687-3702

Attorneys for Defendant Snap Inc.

ATTESTATION PURSUANT TO CASE MANAGEMENT ORDER NO. 27

I attest that the evidence cited herein fairly and accurately supports the facts as asserted.

DATED: December 5, 2025

By: /s/ J. Andrew Keyes
Andrew J. Keyes
*Attorney for Defendants YouTube, LLC
and Google, LLC.*

By: /s/ Christian J. Pistilli
Christian J. Pistilli
*Attorney for Defendants Meta
Platforms, Inc. f/k/a Facebook, Inc.;
Facebook Holdings, LLC; Facebook
Operations, LLC; Meta Payments Inc.
f/k/a Facebook Payments Inc.; Meta
Platforms Technologies, LLC f/k/a
Facebook Technologies, LLC;
Instagram, LLC; and Siculus LLC f/k/a
Siculus, Inc.*

By: /s/ Bailey J. Langner
Bailey J. Langner
*Attorney for Defendants TikTok Inc.,
ByteDance Inc., ByteDance Ltd., TikTok
Ltd., and TikTok, LLC*

By: /s/ Andrew M. Karp
Andrew M. Karp
Attorney for Defendant Snap Inc.

ATTESTATION PURSUANT TO LOCAL RULE 5-1

I, Ashley W. Hardin, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: December 5, 2025

By: /s/ Ashley W. Hardin
Ashley W. Hardin

*Attorney for Defendants YouTube, LLC
and Google, LLC*

CERTIFICATE OF SERVICE

I hereby certify that, in accordance with ECF No. 341, on December 5, 2025, this motion and all attachments thereto were served to the following email addresses:

PSCServiceMDL3047@motleyrice.com
MetaNoticeofService@cov.com
SnapNoticeofService@mto.com
TikTokNoticeofService@faegredrinker.com
YouTubeServiceConfidentialDocs@wsgr.com
MWeinkowitz@lfsblaw.com
pwarren@motleyrice.com
lhazam@lchb.com
amm@classlawgroup.com
TShrack@lfsblaw.com
coanderson@lchb.com
scouch@motleyrice.com
gpanek@lchb.com
kmcnabb@lchb.com
myeates@ktmc.com
jjacobson@ktmc.com
pdandrea@lfsblaw.com
jruff@motleyrice.com

Dated: December 5, 2025

By: /s/ Ashley W. Hardin
Ashley W. Hardin, *pro hac vice*

*Attorney for Defendants YouTube, LLC
and Google LLC*